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OFFICE OF PETITIONS

In re Application of :
Staimer et al. :
Application No. 10/785,376 :
Filed: February 23, 2004 : ON PETITION
Attorney Docket No. :
NAGACO.211A :

This is a decision on the Petition for Entitlement to Priority Date, filed September 20, 2004, requesting the above-identified application be accorded a filing date of February 23, 2004.

The petition is granted.

The application was filed on February 23, 2004. On July 21, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Provisional Application (hereinafter "Notice") stating, *inter alia*, that the application had not been accorded a filing date because the application had been deposited without drawings.

Applicant responds with the instant petition wherein Applicant avers that the application incorporates by reference provisional application no. 60/449,192, the entire disclosure of which has been incorporated by reference.

A review of the file reveals that the application contains method claims. As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. § 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In view of the above, the Notice mailed July 11, 2004, was mailed in error and is hereby withdrawn.

It is also noted that Applicant is correct that the application includes a proper incorporation by reference of provisional application no. 60/449,192. Incorporation by reference permits an applicant to amend the application to include any subject matter in such prior application(s) without the need for a petition, provided the application is entitled to a filing date notwithstanding the incorporation by reference.

This application is being forwarded to the Office of Initial Patent Examination, Customer Corrections, for further processing, with the filing date of February 23, 2004, and an indication that no drawings were required nor present on filing.

The petition fee has been refunded to deposit account 11-1410 as authorized in the instant petition.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


Derek L. Woods

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